

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CLAUDIO LOPEZ,

Petitioner,

- against -

HAROLD D. GRAHAM,

Respondent.
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HONORABLE PAUL A. CROTTY, United States District Judge:

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11 Civ. 07729 (PAC) (MHD)

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

On November 30, 2012, *pro se* Petitioner Claudio Lopez (“Lopez”) filed a 28 U.S.C. § 2254 petition challenging his 2008 conviction of manslaughter in the first degree. On December 8, 2011, the Court referred the matter to Magistrate Judge Michael H. Dolinger. Respondent opposed the petition for a writ of habeas corpus on April 20, 2012. *See* ECF No. 16. Lopez filed a reply on May 24, 2012. *See* ECF No. 21.

On April 14, 2014, Magistrate Judge Dolinger issued a Report and Recommendation (“R&R”) that Lopez’s petition should be denied. *See* Report and Recommendation, ECF No. 23. First, Judge Dolinger concluded that the trial court’s decision not to instruct the jury on the lesser-included offense of second-degree manslaughter did not contradict clearly established federal law and nevertheless was supported by the evidence. *Id.* at 26. Second, Judge Dolinger found that the trial judge properly exercised his discretion in admitting evidence of Lopez’s prior convictions and therefore did not violate Lopez’s right to a fundamentally fair trial. *Id.* at 33. Third, Judge Dolinger found that the Appellate Division did not err in concluding that the prosecutor’s questioning of Lopez was proper with the exception of one line of questioning, which was harmless. *Id.* at 36. Finally, Judge Dolinger concluded that the trial judge’s rulings

regarding Lopez's cross-examination of witnesses did not violate the Confrontation Clause or his right to present a defense. *Id.* at 46-47.

The Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court may adopt those portions of the R&R to which no timely objection has been made, so long as there is no clear error on the face of the record. *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). After being served with a copy of Magistrate Judge Dolinger's R&R, Lopez had fourteen days to file specific written objections to the proposed findings and recommendations. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Lopez's failure to file timely objections to the R&R results in waiver of those objections. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985). Thus, the Court reviews the R&R for clear error. Finding none, the Court hereby adopts the R&R in full.

Accordingly, Lopez's petition is DENIED. Pursuant to 28 U.S.C 1915(a), any appeal from this order would not be taken in good faith and therefore no certificate of appealability should be issued. The Clerk of Court is directed to enter judgment and to close this case.

Dated: New York, New York
June 30, 2014

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copy Mailed By Chambers To:

Claudio Lopez
08-A-3639
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13021